

WEBINAR

WEDNESDAYS



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Minors Who Commit Sexual Offenses: Juvenile versus Adult Court

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**Minors Accused of a Sex Offense:
Juvenile vs Adult Court**



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Read the reports and decide:

WHETHER to file
WHAT to file
WHERE to file

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Deciding *whether* to file

- Things to consider:
 - Corroboration?
 - Age of juvenile
 - Age of victim
 - Victim willingness to prosecute
 - Deviancy?
 - Should I punt to adults?

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Deciding *what* to file

"SCWM" vs "Sexual Assault" vs "Sexual Abuse" vs "CM"

A.R.S. §13-1405 Sexual Conduct with a Minor (SCWM)

- A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age

If V <15 yo, it's a class 2 felony, DCAC (mandatory DOC 13-20-27; 35-life)

If V is 15-17, it's a class 6 felony (except if perp is/was in position of trust, then it's a class 2 felony)

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Deciding *what* to file

A.R.S. §13-1406 Sexual Assault

- A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without the consent of such person

This is a class 2 felony- mandatory DOC (5.25-7-14)

If V <15 yo, it's a class 2 felony, DCAC

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Deciding *what* to file

A.R.S. §13-1404 Sexual Abuse

- A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.
- B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

This is a class 5 felony unless V <15, then it's a class 3 felony, DCAC

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Deciding *what* to file

A.R.S. § 13-1410 Molestation of a Child (CM)

- A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age.

This is a class 2 felony, DCAC (mandatory DOC 10-17-24)

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Deciding *what* to file

"SEM" vs "Unlawful Distribution" vs "Sexting" vs "Furnishing"

A.R.S. § 13-3553 Sexual Exploitation of a Minor ("SEM")

- A. A person commits sexual exploitation of a minor by knowingly:
 1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
 2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
- B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.
- This is a class 2 felony; DCAC if V < 15

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Deciding *what* to file

A.R.S. § 13-1425 Unlawful disclosure of images depicting states of nudity or specific sexual activities

- A. It is unlawful for a person to intentionally disclose an image of another person who is identifiable from the image itself or from information displayed in connection with the image if all of the following apply:
 - 1. The person in the image is depicted in a state of nudity or is engaged in specific sexual activities.
 - 2. The depicted person has a reasonable expectation of privacy. Evidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person's reasonable expectation of privacy for that image.
 - 3. The image is disclosed with the intent to harm, harass, intimidate, threaten or coerce the depicted person.

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Deciding *what* to file

A.R.S. § 13-1425 Unlawful disclosure of images depicting states of nudity or specific sexual activities (cont)

- B. This section does not apply to any of the following:
 - 1. The reporting of unlawful conduct.
 - 2. Lawful and common practices of law enforcement, criminal reporting, legal proceedings or medical treatment.
 - 3. Images involving voluntary exposure in a public or commercial setting.
 - 4. An interactive computer service, as defined in 47 United States Code section 230(f)(2), or an information service, as defined in 47 United States Code section 153, with regard to content wholly provided by another party.
 - 5. Any disclosure that is made with the consent of the person who is depicted in the image.

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Deciding *what* to file

A.R.S. § 13-1425, Unlawful disclosure of images depicting states of nudity or specific sexual activities (cont)

- C. A violation of this section is a class 5 felony, except that a violation of this section is a:
 - 1. Class 4 felony if the image is disclosed by electronic means.
 - 2. Class 1 misdemeanor if a person threatens to disclose but does not disclose an image that if disclosed would be a violation of this section.

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Deciding *what* to file

A.R.S. § 13-1425. Unlawful disclosure of images depicting states of nudity or specific sexual activities (cont)

- D. For the purposes of this section:
 - 1. "Disclose" means display, distribute, publish, advertise or offer.
 - 2. "Disclosed by electronic means" means delivery to an e-mail address, mobile device, tablet or other electronic device and includes disclosure on a website.
 - 3. "Harm" means physical injury, financial injury or serious emotional distress.
 - 4. "Image" means a photograph, videotape, film or digital recording.
 - 5. "Reasonable expectation of privacy" means the person exhibits an actual expectation of privacy and the expectation is reasonable.
 - 6. "Specific sexual activities" has the same meaning prescribed in section 11-811, subsection D, paragraph 18, subdivisions (a) and (b).
 - 7. "State of nudity" has the same meaning prescribed in section 11-811, subsection D, paragraph 14, subdivision (a).

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor ("Sexting")

- A. It is unlawful for a juvenile to intentionally or knowingly use an electronic communication device to transmit or display a visual depiction of a minor that depicts explicit sexual material
- B. It is unlawful for a juvenile to intentionally or knowingly possess a visual depiction of a minor that depicts explicit sexual material and that was transmitted to the juvenile through the use of an electronic communication

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor (cont)

- C. It is not a violation of subsection B of this section if all of the following apply:
 - 1. The juvenile did not solicit the visual depiction
 - 2. The juvenile took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the juvenile's parent, guardian, school official or law enforcement official.

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor (cont)

- D. A violation of subsection A is a petty offense if the juvenile transmits or displays the visual depiction to one other person. A violation of subsection A of this section is a class 3 misdemeanor if the juvenile transmits or displays the visual depiction to more than one person.
- E. A violation of subsection B of this section is a petty misdemeanor.

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor (cont)

- F. Any violation of this section that occurs after adjudication for a prior violation of this section or after completion of a diversion program as a result of a referral or petition charging a violation of this section is a class 2 misdemeanor
- G. For purposes of this section:
 - 1. "Electronic communication device" has the same meaning prescribed in §13-3560.
 - 2. "Explicit sexual material" means material that depicts human genitalia or that depicts nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse as defined in § 13-3501
 - 3. "Visual depiction" has the same meaning prescribed in §13-3551.

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Deciding *what* to file

A.R.S. § 13-3506 Furnishing Harmful Items to Minors

- A. It is unlawful for any person, with knowledge of the character of the item involved, to recklessly furnish, present, provide, make available, give, lend, show, advertise or distribute to minors any item that is harmful to minors
 - B. This section does not apply to the transmission or sending of items over the internet
- This is a class 4 felony

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Deciding *what* to file

A.R.S. § 13-3554 Luring a Minor for Sexual Exploitation

- A. A person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor
- B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor

This is a class 3 felony; DCAC if V is <15 yo

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Deciding *what* to file

Other things to consider:

- Can a 13 yo commit SCWM? SEM?
- Dates of offense(s)?
- How many counts?
 - Use of "to-wits"
- Adult vs Juvenile Court
 - SCWM/Sex Abuse vs Sex Assault

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Deciding *where* to file

Options:

- File in Juvenile Court
- File in Juvenile Court with Extended Jurisdiction
- File in Juvenile court with a Transfer request
 - A.R.S. §8-327
- File in Adult Court
 - A.R.S. §13-501

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Things to Consider

- Competency Issues
- Release Considerations
- PFDA vs Probation vs Incarceration
- Treatment options
 - Outpatient Treatment
 - TGH/BHRF
 - RTC/BHIF
 - ADJC
- Sex Offender Registration Issues

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Competency

- "In any criminal trial every person is competent to be a witness."
A.R.S. § 13-4061
- Presumption can be rebutted.
- Does the Minor understand his/her trial rights?
 - Is there helpful info in the DR?

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Immunity Agreements

A.R.S. §13-4066 Privileged communications; sex offender treatment; exception

A. Any statement that is made by a person who undergoes sex offender treatment that is ordered by the court or that is provided by the state department of corrections to a person who is convicted of an offense listed in chapters 14 or 35.1 of this title and any evidence that results from that treatment is not admissible against the person in any criminal or juvenile delinquency proceeding unless the person consents, except that the statement or evidence may be used pursuant to rule 404(b) and (c), ARE

B. This section does not apply if there is a reasonable belief that the person has committed a new violation of chapter 14 or 35.1 of this title during the course of the person's treatment. A treatment provider who complies with this subsection does not violate any privilege established by law

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Extended Jurisdiction

A.R.S. §8-202 Juvenile Court Jurisdiction (8/3/18)

H. If the state files a notice of intent to retain jurisdiction when proceedings are commenced pursuant to § 8-301, paragraph 1 or 2, the court shall retain jurisdiction over a juvenile who is **at least seventeen years of age** and who has been adjudicated a delinquent juvenile **until the juvenile reaches nineteen years of age**, unless before the juvenile's nineteenth birthday either:

1. Jurisdiction is terminated by order of the court.
2. The juvenile is discharged from the jurisdiction of the department of juvenile corrections pursuant to § 41-2820.

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Transfer Hearing in Juvenile Court

A.R.S. § 8-327

A. The state may request an order of the juvenile court transferring jurisdiction of the criminal prosecution of any felony filed in the juvenile court to the criminal division of the superior court.

B. On request of the state that a juvenile be transferred, the court shall hold a transfer hearing before the adjudication hearing.

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Transfer Hearing in Juvenile Court

A.R.S. § 8-327 (cont.)

C. If the judge finds by a preponderance of the evidence that probable cause exists to believe that the offense was committed, that the juvenile committed the offense and that the **public safety would best be served by the transfer of the juvenile for criminal prosecution**, the judge shall order that the juvenile be transferred for criminal prosecution to the appropriate court having jurisdiction of the offense. The judge shall state on the record the reasons for transferring or not transferring the juvenile for criminal prosecution.

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Transfer Hearing in Juvenile Court

A.R.S. § 8-327 (cont.)

D. The court shall consider the following factors in determining if the public safety would be served by the transfer of a juvenile for criminal prosecution:

1. The seriousness of the offense involved.
2. The record and previous history of the juvenile, including previous contacts with the courts and law enforcement, previous periods of any court ordered probation and the results of that probation.
3. Any previous commitments of the juvenile to juvenile residential placements and secure institutions.
4. If the juvenile was previously committed to the department of juvenile corrections for a felony offense.
5. If the juvenile committed another felony offense while the juvenile was a ward of the department of juvenile corrections.
6. If the juvenile committed the alleged offense while participating in, assisting, promoting or furthering the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.
7. The views of the victim of the offense.
8. If the degree of the juvenile's participation in the offense was relatively minor but not so minor as to constitute a defense to prosecution.
9. The juvenile's mental and emotional condition.
10. The likelihood of the juvenile's reasonable rehabilitation through the use of services and facilities that are currently available to the juvenile court.

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Direct File into Adult Court

A.R.S. §13-501

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is 15, 16 or 17 years old at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First Degree Murder (A.R.S. §13-1105)
2. Second Degree Murder (A.R.S. §13-1104)
3. Forcible Sexual Assault (A.R.S. §13-1406)
4. Armed Robbery (A.R.S. §13-1904)
5. Any other violent offense
6. Any felony offense committed by a chronic felony offender
7. Any offense that is properly joined to an offense listed in this subsection

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Direct File into Adult Court

A.R.S. §13-501

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least 14 years old at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. a class 1 felony
2. a class 2 felony
3. a class 3 felony in violation of any offense in chapters 10-17 or chapter 19 or 23 of this title
4. a class 3, 4, 5 or 6 felony involving a dangerous offense
5. any felony offense committed by a chronic felony offender
6. any felony properly joined to an offense listed

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Direct File into Adult Court

A.R.S. §13-501

C. A criminal prosecution shall be brought against a juvenile in the same manner as an adult if the juvenile has been accused of a criminal offense and has a historical prior felony conviction.

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Direct File into Adult Court

A.R.S. §13-501

D. At the time the county attorney files a complaint or indictment the county attorney shall file a notice stating that the juvenile is a chronic felony offender. Subject to subsection E of this section, the notice shall establish and confer jurisdiction over the juvenile as a chronic felony offender*.

*A.R.S. § 13-501(H)(2) - For the purposes of this section: "Chronic felony offender" means a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult.

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Direct File into Adult Court

A.R.S. §13-501

E. On motion of the juvenile the court shall hold a hearing after arraignment and before trial to determine if a juvenile is a chronic felony offender. At the hearing the state shall prove by a preponderance of the evidence that the juvenile is a chronic felony offender.

If the court does not find that the juvenile is a chronic felony offender, the court shall transfer the juvenile to the juvenile court pursuant to section 8-302.

If the court finds that the juvenile is a chronic felony offender or if the juvenile does not file a motion to determine if the juvenile is a chronic felony offender, the criminal prosecution shall continue.

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Direct File into Adult Court

A.R.S. §13-501

H. for the purposes of this section:

3. "forcible sexual assault" means sexual assault pursuant to §13-1406 that is committed without consent as defined in §13-1401, paragraph 7, subdivision (a)

A.R.S. §13-1401

(7) "Without consent" includes any of the following

- (a) the victim is coerced by the immediate use or threatened use of force against a person or property

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Reverse Transfer

A.R.S. §13-504

- A. On the motion of a juvenile or on the court's own motion, the court, if a juvenile is being prosecuted in the same manner as an adult pursuant to section 13-501, subsection B, shall hold a hearing to determine if jurisdiction of the criminal prosecution should be transferred to the juvenile court.
- B. Notwithstanding subsection A of this section, the court shall hold a hearing if a juvenile is prosecuted in the same manner as an adult pursuant to section 13-501, subsection B for an offense that was committed more than twelve months before the date of the filing of the criminal charge.

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Reverse Transfer

A.R.S. §13-504 (C)

- If the court finds by clear and convincing evidence that public safety and the rehabilitation of the juvenile, if adjudicated delinquent, would be best served by transferring the prosecution to the juvenile court, the judge shall order the juvenile transferred to the juvenile court. On transfer, the court shall order that the juvenile be taken to a place of detention designated by the juvenile court or to that court or shall release the juvenile to the custody of the juvenile's parent or guardian or other person legally responsible for the juvenile. If the juvenile is released to the juvenile's parent or guardian or other person legally responsible for the juvenile, the court shall require that the parent, guardian or other person bring the juvenile to appear before the juvenile court at a designated time. The juvenile court shall then proceed with all further proceedings as if a petition alleging delinquency had been filed with the juvenile court under section 8-301.

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Reverse Transfer

A.R.S. §13-504 (D)

- The court shall consider the following factors in determining whether public safety and the juvenile's rehabilitation, if adjudicated delinquent, would be served by the transfer:
 - 1. The seriousness of the offense involved.
 - 2. The record and previous history of the juvenile, including previous contacts with the court and law enforcement, previous periods of any court ordered probation and the results of that probation.
 - 3. Any previous commitments of the juvenile to juvenile residential placements or other secure institutions.
 - 4. Whether the juvenile was previously committed to the department of juvenile corrections for a felony offense.

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Reverse Transfer

A.R.S. §13-504 (D) (cont)

- 5. Whether the juvenile committed another felony offense while the juvenile was a ward of the department of juvenile corrections.
- 6. Whether the juvenile committed the alleged offense while participating in, assisting, promoting or furthering the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.
- 7. The views of the victim of the offense.
- 8. Whether the degree of the juvenile's participation in the offense was relatively minor but not so minor as to constitute a defense to prosecution.
- 9. The juvenile's mental and emotional condition.
- 10. The likelihood of the juvenile's reasonable rehabilitation through the use of services and facilities that are currently available to the juvenile court.

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Reverse Transfer

A.R.S. §13-504(D) (cont)

- E. At the conclusion of the transfer hearing, the court shall make a written determination whether the juvenile should be transferred to juvenile court. The court shall not defer the decision as to the transfer.

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Real Life Application

- Jose S- Sextortion case
- Alexander F- DV Sexual Assault
- David K- Sexual Assault
- Jesiah T- SEM
- Jace L/Joshua S/Shimone S- violent sex assault/armed robbery

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Questions??

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